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Committee on the Rights of Persons with Disabilities

Communication No. 8/2012

Views adopted by the Committee at its eleventh session (31 March–11 April 2014)

Submitted by:	Mr. X (represented by counsel, Valeria G. Corbacho)
Alleged victim:	The author
State party:	Argentina
Date of communication:	22 June 2012 (initial submission)
Document reference:	Special Rapporteur's rule 70 decision, transmitted to the State party on 9 August 2012 (not issued in document form)
Date of adoption of Views:	11 April 2014
Subject matter:	Denial of house arrest, detention conditions, access to medical care and timely, suitable rehabilitation services
Substantive issues:	Discrimination on the ground of disability; reasonable accommodation; equality and non-discrimination; accessibility; right to life, health, habilitation and rehabilitation
Procedural issues:	Failure to exhaust domestic remedies, failure to substantiate claims
Articles of the Convention:	9; 10; 13; 14, paragraph 2; 15, paragraph 2; 17; 25; and 26
Article of the Optional Protocol:	2 (d) and (e)

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Annex

Views of the Committee on the Rights of Persons with Disabilities under article 5 of the Optional Protocol to the Convention on the Rights of Persons with Disabilities (eleventh session)

Communication No. 8/2012

Submitted by:	Mr. X (represented by counsel, Valeria G. Corbacho)
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Date of communication:	22 June 2012 (initial submission)

The Committee on the Rights of Persons with Disabilities, established under article 34 of the Convention on the Rights of Persons with Disabilities,

Meeting on 11 April 2014,

Having concluded its consideration of communication No. 8/2012, submitted to the Committee by Mr. X under the Optional Protocol to the Convention on the Rights of Persons with Disabilities,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

Views under article 5 of the Optional Protocol

1.1 The author of the communication is Mr. X, an Argentine national, born on 26 November 1952. The author claims to be the victim of violations by Argentina of articles 9; 10; 13; 14, paragraph 2; 15, paragraph 2; 17; 25; and 26 of the Convention. The author is represented by counsel, Ms. Valeria G. Corbacho. The Optional Protocol to the Convention entered into force for the State party on 2 October 2008.

1.2 On 4 February 2013, the Special Rapporteur on new communications, acting on behalf of the Committee, requested that, while the Committee was considering the communication, the State party, pursuant to article 64 of the Committee's rules of procedure, consider taking steps to provide the care, treatment and rehabilitation that the author required because of his state of health. On 31 July 2013, the State party informed the Committee of the steps taken in response to the Committee's request for temporary measures.

The facts as submitted by the author

2.1 The author was held in pretrial detention at the Marco Paz Federal Prison Complex II in connection with a criminal trial against him before the Federal Criminal Court No. 1 in San Martin. With the authorization of the Court, he underwent spinal surgery on 27 January 2010 to replace a cervical disc, which had been removed in 1999 following a traffic

accident, with a plate. On 28 January 2010, the author suffered a stroke which resulted in left homonymous hemianopsia, a sensory balance disorder, a cognitive disorder and impaired visuospatial orientation. In addition, the author alleges that the plate was incorrectly inserted during the spinal surgery and subsequently became lodged, unattached, against his oesophagus.

2.2 Later, with the authorization of the Federal Criminal Court, the author was transferred to the FLENI Institute in Escobar, where his condition was stabilized and he began an inpatient rehabilitation programme.

2.3 On 7 April 2010, the Federal Criminal Court was informed by the FLENI Institute that the author was fit to continue his rehabilitation programme as a day patient. On the same date, the author applied to have his pretrial detention converted to house arrest, pursuant to article 10 of the Criminal Code and articles 32 and 33 of Act No. 24.660 as amended by Act No. 26.472. The author contended that he continued to need daily rehabilitation treatment on a day-patient basis similar to that which he had been receiving since his stroke; that he needed a living space adapted to his disability; and that the distance between the detention centre and the rehabilitation hospital should be taken into consideration. The distance between his previous detention centre and the hospital would, in practice, impede his access to rehabilitation, thereby infringing his right to medical care. Accordingly, he claimed that house arrest was the mode of detention most compatible with his treatment, since at home he had a trusted person to help him with daily tasks, facilities adapted to his disability and easy access to the FLENI Institute where he could undergo rehabilitation.

2.4 On 9 June 2010, two doctors of the Supreme Court Department of Forensic Medicine examined the author at the request of the Federal Criminal Court. According to the Department, the treatment provided by the FLENI Institute was appropriate; the author required assistance from others; while it was not possible to provide full treatment in a prison setting, the private Buenos Aires Institute of Neuroscience was a viable option; and since travel between prisons and the treatment centre could have a detrimental effect owing to the distance involved, the patient would require mobile units and/or special ambulances.

2.5 On 22 July 2010, Evaluation Board No. 3 of the National Rehabilitation Service issued a disability certificate to the author, as provided for by Act No. 22.431, which stated that he required the assistance of others.

2.6 On 6 August 2010, the Federal Court rejected the author's application for house arrest and ordered his transfer to the central prison hospital of the Buenos Aires Federal Penitentiary Complex, where the necessary arrangements would be made for the author to undergo the prescribed rehabilitation therapy from that location. The Federal Criminal Court maintained that the author's pretrial detention did not prevent him from undergoing appropriate rehabilitation therapy.

2.7 Early on the morning of 14 August 2010, the author was transferred to Vélez Sarsfield Hospital and was eventually admitted to the Anchorena Clinic. He also submitted an application for a review of the Federal Criminal Court decision of 6 August 2010.

2.8 On 17 August 2010, the Federal Criminal Court received a report from the Department of Forensic Medicine, which had examined the author during his detention at the Buenos Aires Federal Penitentiary Complex, stating that a clinical neurosurgical assessment was urgently needed and that the prison hospital "does not have the infrastructure the patient requires [... and] although there is no immediate risk of death, remaining in current detention conditions where he cannot get the check-ups or treatments he needs (feeding support and psychiatric treatment) would severely compromise his clinical status and could endanger his life". On the same date, the doctor affiliated with his

medical insurance provider (OSDE) issued a certificate stating that "based on a neurological assessment, the rehabilitation plan should be carried out in hospital".

2.9 On 23 August 2010, the Office of the Prison System Ombudsman (*Procuración Penitenciaria de la Nación*) applied to the Federal Criminal Court for the author's admission to the FLENI Institute for immediate treatment as a precautionary measure to be taken without delay to prevent the appearance of lesions as a result of inappropriate living arrangements. On 26 August 2010, the author was transferred to the FLENI Institute in Escobar.

2.10 On 3 November 2010, the neurosurgeon at the FLENI Institute determined that the author's cervical spine was unstable, that he might require surgery and that regular travel by ambulance was aggravating his condition and should occur only when absolutely necessary. On 17 November 2010, another doctor from the FLENI Institute informed the Federal Criminal Court that it was not possible to provide specific, practical instructions as to how the author's ambulance transfers should be carried out and that the Federal Criminal Court should therefore consult experts in that regard. The Federal Criminal Court requested that the Institute provide a state-of-the-art ambulance with a doctor on board and assess the author's clinical status before every trip.

2.11 On 7 May 2011, the Ombudsman issued a report on the author's latest medical examination which stated that he had improved but required assistance from others to perform basic day-to-day tasks. The report also said that the Federal Prison Service medical facilities lacked the infrastructure and resources needed to ensure the author's health and rehabilitation and that it could not be guaranteed that transport from the prison to the rehabilitation clinic could take place in a manner or on a schedule that would allow him to continue his rehabilitation as an outpatient. Accordingly, the Ombudsman's Office recommended that the author should remain at the FLENI Institute. On 17 May 2011, the FLENI Institute stated that the author continued to suffer neurological after-effects and needed to continue to receive physical, occupational, neurological, cognitive and visual rehabilitation therapy; that the author could continue his rehabilitation programme as an outpatient at a location selected jointly by the Federal Criminal Court and the medical insurance company; that the rehabilitation described above should be carried out between three and five times per week; and the author's travel to and from the place of treatment was subject to the neurosurgeon's recommendations. On 24 June 2011, the medical insurance provider (OSDE) gave the Federal Criminal Court a list of facilities that were equipped to meet the author's rehabilitation needs that were both near his prison and covered by his insurance scheme.

2.12 On 26 May 2011, the author was transferred to the central prison hospital of the Ezeiza Federal Penitentiary Complex No. 1 (the Ezeiza Prison) by order of the Federal Criminal Court. The Court also ordered the Ezeiza Prison to coordinate with OSDE to conduct an assessment and arrange for prompt ongoing treatment in, if possible, a medical centre close to his place of detention.

2.13 On 27 May 2011, following the submission of an application by the defence as part of a habeas corpus proceeding, Federal Criminal and Correctional Court of First Instance No. 1 or No. 2 of Lomas de Zamora authorized the author's transfer to the FLENI Institute because of acute physical and psychiatric decompensation. On 29 May 2011, the author was transferred to the Olivos Clinic. Between 30 May and 3 June 2011, the author was hospitalized at the Argentine Institute of Diagnosis and Treatment, where it was decided that the plate that had been fitted during his spinal surgery had to be removed, with the Institute noting that "although there is a risk of perforating the oesophagus, this could also happen if the plate were to shift. This risk obviously increases with any ill-advised movement that might occur during an improperly prepared transfer or with sudden movements". On 2 June 2011, the Ombudsman concluded that if either outpatient or day-

patient treatment was chosen, transfer of the author from any of the prison complexes was very likely to cause the treatment to fail, since the federal prison system could not guarantee the frequency or timeliness of such travel, and any progress that the author might make could be reversed if the programme of treatment planned by the FLENI Institute were not maintained.

2.14 On 3 June 2010, the author was once again transferred to the Ezeiza Prison hospital.

2.15 On 24 June 2011, the Lomas de Zamora Court rejected the author's habeas corpus application, claiming lack of jurisdiction. On the same date, the author applied again to the Federal Criminal Court for court-supervised house arrest, arguing that the Ezeiza Prison had neither the facilities nor the staff required for the rehabilitation of patients with serious neurological conditions who also required assistance to perform the most basic daily tasks; that his rehabilitation had in fact been interrupted; and that the infrastructure was inadequate for persons with disabilities. In his own case, he could not enter the bathroom or shower because of a step that he could not negotiate on his own; he had been assigned to a cell located on the first floor, which meant that he could not access the courtyard on the ground floor; he was unable to maintain his personal hygiene in a sufficient or appropriate manner and, as a rule, had to perform all basic tasks in bed; he had bedsores; and it was impossible to maintain regular contact with nursing staff. Moreover, medical opinions in which another spinal operation had been recommended had not been taken into account.

2.16 On 4 July 2011, the Ezeiza Prison informed the Federal Criminal Court that, although motor physiotherapy and occupational therapy were available, the author refused to undergo rehabilitation treatment. Furthermore, on 19, 20 and 27 July 2011, the author refused to be transferred to the Santa Catalina Clinic to arrange for rehabilitation therapy, arguing that the Clinic could not provide all the required rehabilitation services.[1]

2.17 On 15 August 2011, the Federal Criminal Court once again rejected the author's application for house arrest. It considered that the author's physical and medical condition were not such as to make it impossible for him to recover while in custody or to be adequately cared for in prison and, when necessary, transferred elsewhere in a state-of-the-art ambulance with a doctor on board. The Federal Criminal Court found no evidence that he could be suitably and effectively treated only if he were to serve his sentence under house arrest.

2.18 The author lodged an appeal against the Federal Criminal Court's decision with the Federal Chamber of the Criminal Court of Cassation (Federal Chamber). On 18 November 2011, the Federal Chamber upheld the appeal and redirected the proceedings back to the Federal Criminal Court based on its finding that there were no up-to-date reports from the Department of Forensic Medicine regarding the author's health, prison living conditions and the possible health effects of transfers between the prison and rehabilitation facilities.

2.19 In November 2011, the author began travelling to and from San Juan de Dios Hospital. However, on 25 November 2011, the head of the hospital's rehabilitation service requested that such travel be suspended until such time as a report on the potential consequences of those trips could be obtained from an expert in disorders of the spine.

2.20 On 2 December 2011, the ophthalmologist at the Ezeiza Prison requested that the author's ophthalmological rehabilitation therapy be resumed in order to treat his left

[1] According to the Federal Criminal Court decision of 15 August 2011, OSDE had notified the Court on 3 August 2011 that the author and his wife had been informed that all the health-care establishments covered by OSDE were half as far away from the Ezeiza Federal Penitentiary Complex as the FLENI Institute.

homonymous hemianopsia. However, according to the author, as of the time that the present communication was submitted, he had yet to undergo rehabilitation therapy.

2.21 On 7 December 2011, the Department of Forensic Medicine informed the Federal Criminal Court that the author's condition was improving and that he required the use of a wheelchair, a cervical brace and the assistance of another person. It also stated that new X-rays were needed to ascertain the state of his cervical spine and that the best course of treatment was outpatient rehabilitation. The Department stated that travel to and from the hospital was necessary irrespective of where the author was detained and that an OSDE ambulance with a Federal Prison System guard on board should be used for this purpose on all occasions.

2.22 On 29 December 2011, the Federal Criminal Court again rejected the author's application for house arrest, arguing that he would need to travel to the rehabilitation centre irrespective of where he was held; therefore, the risk inherent in such travel would not be avoided by granting house arrest. Moreover, there was no evidence that the author could be treated properly only at home or that treatment at home was the only way to avert the risks inherent in travel to the rehabilitation centre. The Federal Criminal Court took note of the report of the on-site inspection conducted by the Gendarmería Nacional at the Ezeiza Prison as part of the habeas corpus proceedings, which listed the measures taken to adapt the facilities to the author's needs, including the installation and testing of an emergency call button and the removal of the step leading to the bathroom in the author's cell. The Court also took note of information submitted by the Public Legal Service regarding the facilities and condition of the medical examination and rehabilitation rooms, 24-hour nursing assistance, the existence and working order of elevators and the fact that a door to the recreation yard had been adapted to the author's needs.

2.23 On 5 January 2012, the author filed an appeal against the decision of the Federal Criminal Court with the Federal Chamber. That same day, the Deputy Director of the Ezeiza Prison hospital informed the Federal Criminal Court that physiotherapy was provided in the author's cell, that he had regular consultations at San Juan de Dios Hospital, that he attended to his hygiene and basic needs in bed with the help of nursing staff and that, if the objective was for the author to reach a point where he would be able to attend to his daily needs on his own, the prison hospital did not have the proper infrastructure for that purpose.

2.24 On 29 June 2012, the director of the prison hospital issued another report describing the rehabilitation treatment that the author had undergone. The author alleges that the report was inaccurate and distorted the fact that the treatment provided at the prison was inadequate, that he had had only four sessions at San Juan de Dios Hospital and that he had not been provided with any visual rehabilitation therapy. Nor had he undergone neuro-cognitive therapy, as the purpose of the various sessions in which he had participated had been to permit the preparation of a neuro-psychological report.

2.25 On 13 July 2012, the Federal Chamber rejected the appeal but ordered the prison authorities to ensure the monitoring, care and regular assessment of the author's health and to take any measures his condition required, especially with regard to medical treatment and access to basic sanitary facilities. The Federal Chamber found that the Federal Criminal Court had given due consideration to the author's health issues before rejecting his application; that there was no evidence that he could be transported safely only if he were at home or that the adverse effects of such travel would be eliminated if he were granted house arrest; and that the author could not use his refusal of rehabilitation services provided by the prison or his partial cooperation with physical examinations to oblige the Court to grant his request for house arrest. The Court considered that corrective measures, including the provision of properly functioning elevators, had been taken with regard to the prison infrastructure to ensure that the author enjoyed greater mobility, comfort and access to the

exercise yard; in addition, note had been taken of the equipment contained in the physiotherapy room, specialized medical examination rooms, trauma rooms and the mobile therapy unit, as well as the availability of round-the-clock nursing care.

2.26 On 12 October 2012, the staff doctor at the prison hospital reported that, owing to the length of time that the author had spent lying down, he had hypotrophy of the lower limbs. The author states that during this period he was not transferred in a timely manner to a health-care facility capable of treating his dental problems, but was transferred only several months later, by which time he required surgery to drain a fistula.

2.27 On 12 and 20 November 2012 and 16 January 2013, the author reiterated his complaints and informed the Committee that, despite the Federal Chamber's orders, the Federal Criminal Court had not taken the necessary measures to ensure suitable, timely access to health-care facilities. The prison authorities had provided no more than a partially adapted plastic chair which lacked essential safety features. Although the report of the staff doctor at the Ezeiza Prison had stated that an external neurological consultation was pending, that consultation had not taken place until 31 October 2012 at the FLENI Institute, and then only as a result of his relatives' efforts. He also claimed that the sector in which he was held had only one nurse for all the patients incarcerated there and that, in practice, he did not receive suitable or timely assistance. On 14 November 2012, the FLENI Institute reported that the author needed intensive rehabilitation therapy in a highly sophisticated centre. The author filed another application in which he asked to be transferred and admitted to the FLENI Institute or another centre with the human and technical resources suited to his needs. However, the Federal Criminal Court denied his application on 28 December 2012.

2.28 The author alleges that, although he has not exhausted all domestic remedies, those remedies have been unreasonably prolonged, making it unlikely that an effective solution will ever be reached. He emphasizes that, in practice, he does not receive the prescribed medical treatment in a timely or efficient manner and that his physical and mental integrity are thus seriously jeopardized.

The complaint

3.1 The author claims to be the victim of violations by Argentina of articles 9; 10; 13; 14, paragraph 2; 15, paragraph 2; 17; 25; and 26 of the Convention.

3.2 The author maintains that determination of the appropriateness of holding him in a prison, including a prison hospital, should take into account his state of health, the lack of infrastructure, medical services and care, and the extent to which his imprisonment adversely affects his health. The interruption of his rehabilitation treatment at the FLENI Institute and the shortcomings described earlier not only infringe his right to the highest attainable standard of health without discrimination and his right to attain maximum independence and full ability but also seriously endanger his life, in violation of articles 25 and 26 of the Convention. In practice, the rehabilitation services provided by the authorities merely constitute palliative care and are insufficient to bring about full rehabilitation. No other inmates are in a state of health such as his that make them dependent on the help of others to carry out basic daily tasks; consequently, holding him in a prison constitutes a violation of his right to equality before the law.

3.3 The inadequacy of infrastructure for persons with his disability and the substandard conditions of detention and health care at the Ezeiza Prison hospital constitute both an affront to his dignity and inhuman treatment. Having been assigned to a first-floor cell at the Ezeiza Prison, the author was unable to access the recreation yard for the first 8 months of his imprisonment, depriving him of access to fresh air and natural light, in violation of article 14, paragraph 2, of the Convention.

3.4 His access to the shower and toilet is limited owing to the size of the bathroom, and he relies on the assistance of the sole nurse in his block or the goodwill of other inmates and guards in order to reach them. The work and alterations carried out by the prison authorities to remove the step that hindered his access to the bathroom and shower are not sufficient because the size of the bathroom is not adapted to wheelchairs; he is thus unable to reach the toilet and shower under his own power. His current condition and the lack of assistance from others do not enable him to attend to his daily hygiene needs, and he depends in part on absorbent pads and products provided by his family. The modifications that were made to his place of detention are insufficient to change the conditions that are irreparably undermining his physical and mental health, in violation of article 15, paragraph 2, of the Convention. The author recalls that the State must guarantee the right to life and integrity of the person and that it bears a special responsibility in this respect because of the extent of the control that prison authorities exercise over persons in custody.

3.5 The author does not have timely contact with the nurse responsible for his block. Although a call button was installed, calls are often not answered immediately and sometimes not at all. He has developed scabs on a number of occasions owing to the lack of a special mattress to prevent bedsores, and his movements are extremely limited. Since his arrival at the Ezeiza Prison, he has not undergone proper postural or visual rehabilitation therapy such as that provided by neurological rehabilitation teams composed of clinical neurologists, physiotherapists, kinesiologists and speech therapists. The closest health-care centre that could provide suitable rehabilitation treatment is 32 km away. He has never undergone visual rehabilitation treatment as prescribed by the ophthalmological staff. He was transferred to a hospital only after he developed an infection that required surgery. The lack of suitable rehabilitation therapy impedes his reintegration into society, his family circle and the labour force because he cannot work in the prison or attain, through the use of educational and therapeutic tools and practices, the kind of life led by other inmates. All of the above constitutes a violation of article 17 of the Convention.

3.6 The author alleges that the courts did not take due account of his situation and ordered his imprisonment despite medical information supporting his application for house arrest or for a custodial arrangement in hospital. More specifically, they arbitrarily dismissed his claims that travel between the Ezeiza Prison and the rehabilitation hospital was prejudicial to his health and could pose a serious risk, given the instability of his spine. House arrest would allow him to undergo outpatient rehabilitation with his attending physicians at the FLENI Institute, which is 5 km from his house by paved road and offers all the necessary rehabilitation services.

3.7 The author further states that he was obliged — as, for example, on 11 April 2011 — to travel to the site where his trial was being held only to be denied access to the hearing, forcing him to spend over six hours in the ambulance, against his doctors' advice. This is an illustration of the authorities' arbitrary decisions regarding persons who, like him, have been accused of crimes against humanity.

3.8 By way of reparation, the author requests that he be placed under house arrest until such time as he is fit to undergo another operation on his cervical spine and that he be authorized to complete the necessary rehabilitation in a timely manner as a day patient at the FLENI Institute in Escobar, subject to any security measures the State party deems necessary, appropriate and reasonable.

State party's observations on admissibility and on the merits

4.1 On 12 March 2013, the State party submitted its observations on the admissibility and merits of the communication and requested that it should be declared inadmissible under article 2, paragraphs (d) and (e), of the Optional Protocol based on the following arguments.

4.2 With regard to the events that led to the author's imprisonment, the State party notes that the author was an officer of the Buenos Aires Provincial Police during the dictatorship of 1976–1983. On 14 April 2011, the Federal Criminal Court sentenced the author to life imprisonment and absolute, lifelong disqualification for the offences of unlawful entry, unlawful deprivation of liberated as a consequence of aggravated abuse of power, aggravated torture and doubly aggravated murder. At the time that the State party submitted its observations, the sentence was being appealed before the National Chamber of the Criminal Court of Cassation. The author's conviction should be viewed within the context of the quest for remembrance, truth and justice and the associated effort to identify, prosecute and punish those responsible for serious crimes committed during the dictatorship.

4.3 The author has not exhausted all domestic remedies in connection with the complaints that he has brought before the Committee, since the avenue he chose was inappropriate for the reparation of the alleged violations. Furthermore, he alleges violations of the Convention without proof that any domestic administrative and/or legal action has been taken to seek reparation. His application for house arrest was considered by the Federal Criminal Court and the Federal Chamber and was rejected by the latter because he failed to meet the legal conditions for house arrest. The author could have lodged a special federal appeal before the Supreme Court. However, he preferred to turn directly to the Committee even while admitting that he has not exhausted all domestic remedies. Act No. 48, article 14, stipulates that one of the prerequisites for a special appeal is that the matter should be subject to federal jurisdiction, with one example being infringement of articles of the Constitution or of a treaty such as the Convention. Accordingly, the failure to lodge such an appeal means that domestic remedies have not been exhausted. The author's allegations that proceedings have been unreasonably prolonged are groundless. In fact, he does not even mention the subsequent proceedings during which his application for house arrest was considered. Moreover, the author did not file any complaint before an Argentine court alleging unduly prolonged proceedings. His application was fully considered by the relevant courts, and due process was observed.

4.4 The author's allegations are generic and lack specifics and have not been substantiated. The judicial authorities responded to the applications submitted by the author regarding the medical treatments that he needed and his detention and living conditions on numerous occasions.

4.5 The State party presents an account of the facts of the case and points out that the Federal Chamber rejected the author's appeal on 13 July 2012. Nevertheless, it explicitly set out the Federal Criminal Court's obligations: namely, that, as a matter of urgency, it should take all necessary measures regarding his medical rehabilitation and access to basic sanitary facilities in his place of detention. Pursuant to this decision, on 18 July 2012, the Federal Criminal Court ordered Ezeiza Prison to adopt a number of measures, such as the submission of monthly reports on the author's state of health and rehabilitation and the provision of 24-hour nursing assistance.

4.6 The Federal Chamber ordered the Federal Criminal Court to conduct a new medical examination with a view to giving due consideration to the author's application for house arrest. The Department of Forensic Medicine conducted this examination, which then served as the basis for the Federal Criminal Court's decision of 29 December 2011 to reject the author's application. The judicial authorities were not unreceptive to the author's allegations; on the contrary, the Federal Chamber upheld his appeal against the Federal Criminal Court's decision of 15 August 2011.

4.7 The State party comments on the discrepancies between the medical opinion of the Department of Forensic Medicine and the expert opinion submitted by the author during the proceedings in the nation's courts. It points out that, according to the former, the author

should continue with his postural and visual rehabilitation as an outpatient, for a period to be determined based on his progress. The application for house arrest was based on faulty reasoning, since, in either case, the author would need to travel to and from the rehabilitation centre.

4.8 The Federal Criminal Court requested reports on the conditions of detention from the Ezeiza Prison, which were supplemented with information from the Gendarmería Nacional and the Public Prosecution Service. Officials from these agencies had toured the site to see what conditions were like in the prison hospital, to determine the status of the rehabilitation and medical equipment in the prison, and to check whether a nurse was on duty 24 hours a day, how accessible the author's private bathroom was, whether an elevator was available and what its operating condition was and whether a door had been adapted in order to provide access to the recreation yard. The State party claims that the purpose of the medical certificates issued by the FLENI Institute and submitted by the author on 12 and 20 November 2012 — which stressed the need for his admission to a state-of-the-art centre — was to obtain approval for house arrest.

4.9 The author received the same treatment as any other person in his situation. House arrest is an exception to the general rule; it is standard practice for the courts to order that convicts serve their sentences in ordinary correctional establishments or prison hospitals, rather than to grant any unjustified privileges.

4.10 The State party requests that the Committee find the communication inadmissible for failure to exhaust domestic remedies or, in the alternative, for being manifestly ill-founded.

Additional information submitted by the author

5.1 The author submitted additional information to the Committee on 15 March, 24 April, 11 June, 5 August, 10 November and 17 December 2013 and on 6 March 2014. He alleges that, as of 15 March 2013, no reasonable effort had been made to accommodate his needs in the Ezeiza Prison and that he had not received the rehabilitation treatment recommended by his doctors.

5.2 On 17 April 2013, the Ezeiza Prison doctor submitted a medical report to the Federal Criminal Court which stated that the prison hospital did not have a highly sophisticated rehabilitation centre capable of providing the treatment prescribed by the author's attending physicians at the FLENI Institute; it was therefore recommended that the author be admitted to a highly sophisticated rehabilitation facility.

5.3 The author filed an appeal with the Federal Chamber against the Federal Criminal Court's decision of 28 December 2012 to deny his request for transfer and admission to the FLENI Institute, alleging that the measures ordered by the Federal Chamber in its decision of 13 July 2012 had not been carried out and that his health continued to deteriorate.

5.4 On 29 May 2013, the Federal Chamber upheld the author's appeal, set aside the contested decision and ordered the Federal Criminal Court to re-examine the author's application for admission to a health centre. The Federal Chamber took note of the Ezeiza Prison medical report of 17 April 2013 and of the Committee's request for interim measures of 4 April 2013 and ordered the Federal Criminal Court to send a representative to the prison hospital to observe the author's conditions of detention.

5.5 The author reiterates that, despite this judicial decision, he still has not received satisfactory treatment. In practice, it is materially impossible to obtain outpatient care because the Federal Prison Service is unable to coordinate his travel properly or to maintain the routine required for his treatment so that he can keep external medical appointments. He

further alleges that, owing to a lack of timely dental care, on 4 June 2013 his dentist concluded that he could not be given dental implants.

5.6 On 12 June 2013, the Federal Criminal Court once again rejected his application for admission to the FLENI Institute. On 1 July 2013, the author lodged an appeal. He alleged that the Federal Criminal Court lacked solid documentary evidence that he had refused to attend rehabilitation sessions at the Ezeiza Prison with the physiotherapist of the Geben Alternative Rehabilitation Centre between January and March 2012. He further alleged that the Geben Centre physiotherapist's opinion regarding the suitability and adequacy of the rehabilitation equipment at the prison hospital conflicted with the opinions of the physiotherapist and attending physician who treated him there on a daily basis. Notwithstanding the opinion of his attending physicians, who felt that he should be admitted to hospital, as well as the opinions issued by the Department of Forensic Medicine on 7 and 17 December 2012, the Federal Criminal Court rejected his application. The author adds that for two years he did not undergo the rehabilitation therapy required for his disability and that he is obliged to travel dozens of kilometres by ambulance for two physiotherapy sessions and one session with a psychologist per week. This adversely affects his physical and psychological condition, especially considering the frailty of his cervical spine.

5.7 The author submits to the Committee that the rehabilitation treatment offered by the State party is only partial and did not begin until mid-July 2013. Furthermore, for reasons beyond his control, the rehabilitation sessions were interrupted in September 2013 when the ambulance used to transport him was involved in an accident. As a result, the author experienced severe neck and hip pain, for which he underwent medical tests, and his transfers to San Juan de Dios Hospital were suspended.

5.8 On 10 November 2013, the author informed the Committee that, according to the Department of Forensic Medicine, his latest medical examination indicated that his general health had not improved. On 17 December 2013, the author stated that the ambulance accident demonstrated the risk to his life and health posed by the trips back and forth between the prison and the hospital. These trips not only occasion a great deal of anxiety and pain, which makes the treatment less effective, but also prevent him from having prison visits on the days assigned to him by the prison authorities when the trips to the hospital coincide with the designated hours for prison visits by family members and friends.

5.9 On 6 March 2014, the author reiterated his claims regarding the lack of suitable, timely rehabilitation treatment and regarding the negative effects on his cervical spine of the trips in the ambulance. He argued that he should be admitted to a specialized health centre or placed under house arrest. He also stated that the latest report from his attending physician indicated that the care he was receiving was insufficient and ineffective and that he therefore required four hours of rehabilitation therapy per day.

State party's additional observations

6.1 On 31 July 2013, the State party informed the Committee of the action taken in response to the Committee's request for interim measures of 4 February 2013. On 12 June 2013, by order of the Federal Chamber, the Federal Criminal Court re-examined the application for admission to the FLENI Institute and ruled against it. Previously, the Federal Criminal Court had arranged for a visit with the author and an inspection of his living arrangements at the prison hospital, including the bathroom and the areas reserved for physiotherapy, which it found to be clean and well maintained.

6.2 The Federal Criminal Court took note of the medical information provided by the Department of Forensic Medicine, which indicated that it was unnecessary to adopt further

measures and that, as noted in previous reports, the author should continue to receive outpatient rehabilitation treatments.

6.3 Regarding the Ezeiza Prison doctor's report of 17 April 2013, the State party points out that the doctor in question was interviewed during the Federal Criminal Court proceedings and had said that her opinion was based solely on the recommendations of the author's doctors at the FLENI Institute. Moreover, the Federal Criminal Court states that the medical reports issued at the time of the author's discharge from the Institute indicated that he was fit to continue treatment as an outpatient and that neither the attending physicians at the Institute nor the officially designated experts had challenged that finding.

6.4 On the basis of information from OSDE, the Federal Criminal Court confirmed that the author had refused the rehabilitation services offered by the Geben Centre at the prison in June 2012 and had insisted on being treated on the basis of the rehabilitation programme of the FLENI Institute and at its facilities. The Federal Criminal Court took note of the assertion of the physiotherapist who treated the author in prison that the rehabilitation equipment had certain limitations but pointed out that those claims were contradicted by OSDE, which had stated, following the visit by the Geben doctor, that physiotherapy was possible at the author's place of detention since his private doctors could practice there. Moreover, the availability of state-of-the-art equipment had been confirmed by the Special Prosecutor-General of the Human Rights Division of the Attorney-General's Office, who had visited the prison hospital and interviewed the author on 8 May 2013. Therefore, the Federal Criminal Court concluded that the equipment for physiotherapy had been demonstrated to be available, adequate — at least in terms of basic inputs — and in good condition and working order.

6.5 Accordingly, the Federal Criminal Court concluded that, with the exception of the opinion of the Ezeiza Prison doctor, there was no medical basis or new evidence to support the author's application. Taking note of the Committee's request of 4 February 2013 for interim measures, the Federal Criminal Court requested that the Department of Forensic Medicine conduct a medical assessment to establish the author's state of health, evaluate his rehabilitation treatment and determine whether he should continue to be held in the prison hospital. It also ordered that the rehabilitation services offered by OSDE should be continued; that, if the author were to refuse to use the service, a record of any such refusal should be kept and steps should be taken to make sure that his refusal reflected a free and informed decision; and that the Department of Forensic Medicine should prepare a general report on his state of health and progress on a monthly basis.

6.6 On 20 September 2013, the State party informed the Committee that the Federal Criminal Court had requested information from the San Juan de Dios rehabilitation centre, and that the centre had confirmed that the author was undergoing rehabilitation physiotherapy and psychotherapy.

6.7 On 15 November and 19 December 2013, the State party informed the Committee that, at the request of the Federal Criminal Court, on 9 October 2013 the author had undergone an expert medical examination conducted by the Department of Forensic Medicine and three medical experts designated by the parties. The report indicated that there had been no significant change in the author's state of health. Following the ambulance accident, on 3 September 2014, the author underwent a medical examination to determine his state of health and, in particular, to ascertain if any injury had been sustained by his cervical spine or brain. This examination did not reveal any change in relation to the earlier findings. The report also states that the prison has suitable equipment for musculoskeletal rehabilitation treatments but not for the rehabilitation of patients with bipedal ambulation and balance disorders or patients in need of visual rehabilitation treatments. It therefore recommended that the author be held in the Ezeiza Prison and that a portion of his rehabilitation treatment be conducted in a hospital outside the prison. One of

the medical experts designated by the parties stated, however, that, although the prison's rehabilitation treatment facilities were in excellent condition and hygienic, the author suffered from such complex sequelae that he should be admitted into a specialized neurological rehabilitation centre.

6.8 On 2 April 2014, the State party reiterated that the communication should be declared inadmissible under article 2 of the Optional Protocol in the light of the arguments that it had previously presented to the Committee; that the prison sentence handed down to the author forms part of the effort to uphold remembrance, truth and justice; and that the sole intention of the author of the present communication is to avoid serving his prison sentence.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claims contained in a communication, the Committee on the Rights of Persons with Disabilities must decide, in accordance with article 2 of the Optional Protocol and rule 65 of the Committee's rules of procedure, whether or not it is admissible under the Optional Protocol.

7.2 The Committee has ascertained, as required under article 2 (c) of the Optional Protocol, that the same matter has not already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement.

7.3 The Committee notes that the author has invoked a violation of article 13 of the Convention and has alleged that, despite his state of health and against the advice of his doctors, he was obliged to travel to the court where the oral proceedings against him were taking place, only to be denied entry to the hearing, so that he was forced to remain in the ambulance or on a stretcher elsewhere. Nevertheless, on the basis of the documentation that has been submitted, the Committee cannot conclude that the author has exhausted all domestic remedies in respect of this allegation and therefore declares this portion of the communication inadmissible under article 2 (d) of the Optional Protocol.

7.4 The Committee takes note of the State party's argument that the author has not exhausted all domestic remedies, given that he selected an inappropriate remedy for the alleged violations, and that he has not filed a special federal appeal with the Supreme Court against the Federal Chamber's decision of 13 July 2012. The Committee notes that the author has applied to the courts for authorization of house arrest or transfer and admission to a health-care centre on a number of occasions. Specifically, he has appealed three times to the Federal Chamber of the Criminal Court of Cassation, most recently on 29 May 2013. The Committee considers that the State party has failed to explain its assertion that the author used the wrong remedy; nor has it explained how a special federal appeal would have been effective or sufficient, or said what other remedy was available for seeking redress for the violations alleged by the author if they were found to exist. Given the nature of the issues under consideration, the Committee is of the view that the author has made a sufficient effort to bring his complaints before the national authorities. Moreover, by pursuing the extraordinary remedies provided for under State party legislation, the processing of the application could be excessively prolonged, which could jeopardize the applicant's physical integrity. The Committee therefore concludes that article 2 (d) of the Optional Protocol does not pose an obstacle to the admissibility of the communication.

7.5 The Committee takes note of the State party's argument that the communication is inadmissible under article 2 (e) of the Optional Protocol because the author's allegations are ill-founded, generic and unspecific. The Committee considers that the author's complaints and the information provided raise issues that warrant consideration under articles 9; 10;

14, paragraph 2; 15, paragraph 2; 17; 25; and 26 of the Convention and that they have been sufficiently substantiated to be found admissible. Accordingly, and in the absence of other obstacles to a finding of admissibility, the Committee declares the communication partially admissible and proceeds to its consideration on the merits.

Consideration of the merits

8.1 The Committee on the Rights of Persons with Disabilities has considered this communication in the light of all the information that it has received, in accordance with article 5 of the Optional Protocol and rule 73, paragraph 1, of the Committee's rules of procedure.

8.2 The Committee takes note of the author's complaint that he has been discriminated against by the authorities because they failed to take his disability and state of health into consideration when placing him in the central prison hospital of the Ezeiza Federal Penitentiary Complex and to make the reasonable accommodations required for his personal safety. This led to the interruption of the rehabilitation prescribed by his attending physicians and the violation of his right to the highest attainable standard of health without discrimination as well as of his right to attain maximum independence and full ability. In addition, the author claims that the authorities arbitrarily dismissed his allegations regarding the risk to his health posed by travel between the Ezeiza Prison and the rehabilitation hospital; that the prison infrastructure is substandard and unsuited to persons with his disability; and that the adjustments made by the prison authorities in his place of detention are not sufficient to prevent continued irreparable harm to his physical and mental health.

8.3 Information provided to the Committee indicates that the author underwent spinal surgery and that, during the surgery, a plate was inserted at the cervical level incorrectly. He also suffered a stroke with serious consequences, which left him with left homonymous hemianopsia, a sensory balance disorder, cognitive impairment and dysfunctional visuospatial orientation. As a result, the author requires rehabilitation in the form of physical, neurological, cognitive, visual and occupational therapy. On 7 April 2010, the FLENI Institute informed the Federal Criminal Court that the author was fit to continue day-patient rehabilitation, and on 6 August 2010, the Federal Court ordered his incarceration, initially at Buenos Aires Federal Penitentiary Complex then, on 26 May 2011, at the Ezeiza Prison, where he remains.

Conditions at the place of detention

8.4 The Committee takes note, on the one hand, of the author's claims that his cell at the Ezeiza Prison is unsuitable for a person with disabilities. The accommodations made by the prison authorities are insufficient because the bathroom is too small to enter using a wheelchair, the partially adapted plastic chair in the bathroom does not meet basic safety standards, and he cannot get to the toilet or shower on his own and therefore depends on help from a nurse or other person. Although a call button was installed, it often takes some time before someone responds. He has developed bedsores on a number of occasions owing to the lack of a special mattress to prevent them, and his range of movement is extremely limited. He can only attend to his basic needs using bedpans or other such devices, and the lack of assistance from others means that he cannot clean himself on a daily basis. The absence of suitable infrastructure for persons with disabilities and the substandard conditions of detention constitute both an affront to his dignity and inhuman treatment. On the other hand, the Committee takes note of the State party's observation that the authorities made the necessary modifications to remove the step that had hindered access to the bathroom and shower. Furthermore, the judicial authorities and officials of the Gendarmería Nacional and the Public Legal Service toured the site and ascertained that elevators existed

and were in working order, that a door to the recreation yard had been specially fitted to accommodate the author and that a functioning call button existed to summon a nurse, with nursing staff being on duty around the clock.

8.5 The Committee recalls that, under article 14, paragraph 2, of the Convention, persons with disabilities deprived of their liberty have the right to be treated in compliance with the objectives and principles of the Convention, including by provision of reasonable accommodation. It further recalls that accessibility is a general principle of the Convention and, as such, also applies to situations in which persons with disabilities are deprived of their liberty. The State party is under an obligation to ensure that prisons afford accessibility to all persons with disabilities who are deprived of their liberty. Accordingly, States parties must take all relevant measures, including the identification and removal of obstacles and barriers to access, so that persons with disabilities who are deprived of their liberty may live independently and participate fully in all aspects of daily life in their place of detention; such measures include ensuring their access, on an equal basis with others, to the various areas and services, such as bathrooms, yards, libraries, study areas, workshops and medical, psychological, social and legal services. In the case under review, the Committee acknowledges the accommodations made by the State party in order to remove the barriers that impeded the author's access to areas within the physical environment of the prison. However, the Committee considers that the State party has not irrefutably demonstrated that the accommodations made in the prison complex are sufficient to ensure the author's independent (insofar as possible) access to the bathroom and shower, recreation yard and nursing service. The Committee observes in this connection that the State party has not asserted that there are any obstacles that would prevent it from taking the necessary measures to facilitate the author's mobility or denied the author's allegations that architectural barriers to accessibility persist. Consequently, the Committee considers that, in the absence of sufficient explanations, the State party has failed to fulfil its obligations under article 9, paragraphs 1 (a) and (b), and article 14, paragraph 2, of the Convention.

8.6 Having reached the above conclusion, and given the circumstances of the case, the Committee considers that, in the light of the lack of accessibility and a sufficient degree of reasonable accommodation, the author has been placed in substandard conditions of detention that are incompatible with the right set forth in article 17 of the Convention.

8.7 The Committee recalls that the failure to adopt relevant measures and to provide sufficient reasonable accommodation when they are required by persons with disabilities who have been deprived of their liberty may constitute a breach of article 15, paragraph 2, of the Convention. In the present case, however, the Committee does not consider that it has sufficient evidence before it to conclude that there has been a violation of article 15, paragraph 2, of the Convention.

Health care and rehabilitation treatment

8.8 The Committee takes note of the author's allegations that he has not undergone suitable or timely rehabilitation treatment since his arrival at the Ezeiza Prison and that the prison complex lacks the infrastructure, equipment and staff required to provide such treatment. The Committee further notes the State party's observations that, in coordination with OSDE, arrangements can be made for the provision of outpatient rehabilitation therapy at the Ezeiza Prison and at nearby health-care centres outside the prison; that the author has refused to undergo rehabilitation therapy on a number of occasions; and that his applications for the authorization of house arrest or detention in hospital have been duly considered by the judicial authorities, who ordered the Federal Criminal Court to take the necessary steps to protect the author's health and integrity.

8.9 The Committee recalls that, under article 25 of the Convention, persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination and that States parties shall take all appropriate measures to ensure access for persons with disabilities to health services, including rehabilitation. Furthermore, article 26 stipulates that States parties shall take effective and appropriate measures to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life, through comprehensive habilitation and rehabilitation services and programmes in such a way that they begin at the earliest possible stage and are based on the multidisciplinary assessment of individual needs and strengths. In the light of these provisions, read in conjunction with article 14, paragraph 2, the Committee recalls that States parties have a special responsibility to uphold human rights when prison authorities exercise significant control or power over persons with disabilities who have been deprived of their liberty by a court of law.

8.10 In the present case, there is no doubt that the author requires health care and rehabilitation. In this connection, the Committee notes that, since his arrival at the Ezeiza Prison on 26 May 2011, the prison has failed to provide the rehabilitation therapy prescribed by his attending physicians at the FLENI Institute on a regular basis. However, the author has on occasion refused to undergo rehabilitation treatment at the Ezeiza Prison or outside hospitals selected by the authorities. As a result of action taken by the Federal Chamber of the Criminal Court of Cassation, the author has had regular physiotherapy and psychotherapy sessions at the San Juan de Dios rehabilitation centre and the prison hospital since July 2013. The Committee is aware that the statements of the author and the State party regarding the quality and quantity of the author's rehabilitation treatments while in prison are contradictory. Nevertheless, the Committee observes that, on the one hand, the author's claims have not been substantiated in an entirely convincing manner and that, on the other hand, the courts have taken steps to respond to the author's medical needs. Consequently, and given the particular circumstances of this case, the Committee does not have sufficient evidence before it to conclude that violations of articles 25 and 26 of the Convention have occurred.

Risks posed to the author's health and life by the condition of his cervical spine

8.11 The Committee takes note of the author's claims regarding the frailty of his cervical spine and the serious risks posed by the fact that the surgically implanted plate has shifted and is no longer attached. According to the author, the authorities have seriously endangered his life and health by confining him in a prison and obliging him to accept outpatient treatment that entails frequent ambulance transfers, which pose a serious risk to his life and health. The Committee further takes note of the medical opinions requested by judicial authorities and those submitted by the author. The Committee observes that the author's attending physicians at the FLENI Institute recommended outpatient treatment on 7 April 2010; that after this date, the author was admitted to health-care centres, including one of his own choosing, and underwent medical assessments and tests; and that the medical opinions regarding the potential consequences that such travel could have due to the condition of the author's cervical spine are inconclusive. In the light of the information at its disposal, the Committee does not have sufficient evidence before it to conclude that travel to and from the prison in a highly sophisticated ambulance with a doctor in attendance, or the author's confinement in prison, constitute a violation of article 10 or article 25 of the Convention.

9. The Committee, acting under article 5 of the Optional Protocol to the Convention, is of the view that the State party has failed to fulfil its obligations under article 9, paragraphs 1 (a) and (b), article 14, paragraph 2, and article 17 of the Convention and therefore makes the following recommendations to the State party:

(a) Concerning the author: the State party is under an obligation to provide redress for the breaches of the author's rights under the Convention by making accommodations in his place of detention to ensure his access to prison facilities and services on an equal basis with other prisoners. The State party should also reimburse the author for the legal costs associated with the submission of this communication. In addition, bearing in mind the author's delicate health, the Committee requests the State party to ensure that, while patients are free to consent to or refuse medical treatment, the author has access to suitable, timely health care that is in keeping with his state of health as well as full access to suitable rehabilitation therapy on a regular basis;

(b) General matters: the State party is under an obligation to take steps to prevent similar violations in future. In particular, the State is under an obligation to:

(i) Adopt appropriate measures and provide sufficient reasonable accommodation upon request in order to ensure that persons with disabilities who have been deprived of their liberty can live independently and participate fully in all aspects of life in their place of detention;

(ii) Adopt appropriate measures and provide sufficient reasonable accommodation upon request in order to ensure that persons with disabilities who have been deprived of their liberty enjoy access, on an equal basis with other persons deprived of their liberty, to the facilities of their place of detention and the services offered there;

(iii) Adopt appropriate measures to ensure that persons with disabilities who have been deprived of their liberty have access to medical and rehabilitation treatments so that they may enjoy the highest attainable standard of health without discrimination;

(iv) Ensure that, as a consequence of a lack of accessibility or reasonable accommodation, the conditions of detention in which persons with disabilities are held do not become more onerous or cause greater physical and psychological suffering of an extent that would constitute cruel, inhuman or degrading treatment or that would undermine their physical and mental integrity;

(v) Provide sufficient, regular training on the scope of the Convention and its Optional Protocol to judges, other judicial officers and prison officials, especially health-care personnel.

10. In accordance with article 5 of the Optional Protocol and rule 75 of the Committee's rules of procedure, the State party should submit a written response to the Committee in six months' time that includes information on any action taken in the light of the Views and recommendations of the Committee. The State party is also requested to publish the Committee's Views and to circulate them widely in accessible formats so that they are available to all sectors of the population.

[Adopted in Arabic, Chinese, English, French and Spanish, the Spanish text being the original version. Subsequently to be issued also in Russian as part of the Committee's biannual report to the General Assembly.]